

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 160 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

**SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA -
Petitioner(s)**

Versus

SUNAM PACKAGING PVT. LTD. - Respondent(s)

Appearance :

DR MAHESH THAKAR for Petitioner No(s).: 1.

MS MONA N TRIVEDI for Petitioner No(s).: 1.

NOTICE UNSERVED for Respondent No(s).: 1.

CORAM :HON'BLE MR.JUSTICE K.A.PUJ

Date : 14/07/2005

ORAL JUDGMENT

1. The petitioner, namely, Small Industries Development Bank of India has filed this petition under Section 433, 434 of the Companies Act, 1956 for winding up of the respondent Company on the ground that the respondent Company has failed to make the payment of Rs. 86,91,013/- together with interest @ 21% p.a. from 27.04.2001 till the date of payment.
2. This Court has issued notice on 29.08.2001. In spite of attempts made by the petitioner, the respondent Company was not served. This Court has, therefore, permitted the petitioner vide its order dated 19.02.2002 to serve the respondent Company by advertisement in the local newspaper, namely, "Gujarat Mitra" and the Court has also granted ad-interim relief in terms of para 25 (D) of the petition whereby the respondent Company was restrained in any manner from disposing of or

alienating or parting with possession of any assets either movable or immovable of the respondent Company and was directed to file detailed affidavit regarding the registers of the Company to be separately maintained under Section 209 of the Companies Act.

3. Pursuant to the said order, the petitioner has published the advertisement in the newspaper on 26.06.2002 and affidavit of service of notice along with the newspaper cuttings was filed on 02.07.2002. Despite the publication of the advertisement / notice in the newspaper, nobody appeared for the respondent Company. The Court has, therefore, admitted the petition on 12.08.2002 and also passed the order of advertisement directing the petitioner to publish the advertisement in "Gujarat Mitra" Gujarati Daily – Surat Edition and "Indian Express" English Daily – Baroda edition. Publication in Government Gazette was dispensed with. The Court has also

appointed the Official Liquidator as Provisional Liquidator and he was directed to take inventory of the assets of the respondent Company. The Official Liquidator was also directed to break open the lock if the office of the Company was found to be locked.

4. Though the above referred directions were issued by this Court on 12.08.2002, the Official Liquidator has not taken possession and inventory of the assets of the Company and hence, this Court has passed further order on 27.09.2002 to comply with the order dated 12.08.2002 forthwith.
5. Pursuant to the orders of advertisement passed by this Court on 12.08.2002 and 27.09.2002, advertisement appeared and affidavit of publication was filed along with relevant newspaper cuttings. It is, however, not certain as to whether the Official Liquidator has taken the possession of the assets of the Company or as

to whether he has taken the inventory of the assets of the Company. It has also not come on record as to whether the petitioner has deposited a sum of Rs.3,000/- with the Official Liquidator to meet with the cost of taking inventory as ordered by this Court on 12.08.2002. This petition was listed last time on 29.06.2003 and thereafter it has come for the first time on 07.07.2005 and it was adjourned to today i.e. 14.07.2005. Nobody appears either on behalf of the petitioner or on behalf of the respondent Company. It appears that the respondent Company's financial substratum has gone down and the Company has failed to discharge its financial liabilities towards its Creditors. It is not possible for the Company to revive or to restart its business activities. The Court is, therefore, of the view that it is not in public interest nor in the interest of the Creditors and members of the Company to allow such Company to remain in existence. It is, therefore, just and appropriate

to pass the order of winding up. Accordingly, the respondent Company is hereby ordered to be wound up. The Official Liquidator who was earlier appointed as the Provisional Liquidator of the Company will now work as Liquidator of the Company and if he has not taken possession of the assets of the Company, he is directed to take charge of the assets of the Company and intimate to the Ex-Directors as well as the Secured Creditors of the Company and take out the inventory of the assets of the Company with the help of Valuer. He is further directed to explain as to why earlier two orders dated 12.08.2002 & 27.09.2002 have not been complied with. The Official Liquidator shall also invite the claims of the Creditors as well as the Workers forthwith.

6. With the aforesaid directions and observations, this petition is accordingly disposed of as allowed.

Savariya